

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

UNITED STATES OF AMERICA,)	
)	
Petitioner,)	CASE NO. C15-00102RSM
)	
v.)	SEATTLE, WASHINGTON
)	July 7, 2015
MICROSOFT CORPORATION, et al.,)	
)	TELEPHONE CONFERENCE
Respondents.)	
)	

VERBATIM REPORT OF PROCEEDINGS
BEFORE THE HONORABLE RICARDO S. MARTINEZ
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Petitioner: JAMES WEAVER
NOREENE STEHLIK
JEREMY HENDON
AMY MATCHISON

For the Respondents: PATRICIA EAKES
BRIAN PRESTES
DANIEL ROSEN

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1 July 7, 2015

2:00 p.m.

PROCEEDINGS

3 THE CLERK: This is Laurie, with Judge Martinez.

4 MS. EAKES: Hi Laurie. This is Patty Eakes on behalf
5 of Microsoft.

6 THE CLERK: We have a court reporter here, along with
7 Judge Martinez, and we're going to need all counsel that are
8 participating to make an appearance for the record; and
9 during the call, when you're speaking, we need you to
10 identify yourself before you begin speaking.

11 MS. EAKES: Okay.

12 THE CLERK: Patty, if you would like to start.

13 MS. EAKES: Sure. This is Patty Eakes on behalf of
14 Microsoft.

15 MR. ROSEN: This is Daniel Rosen on behalf of
16 Microsoft.

17 MR. PRESTES: Good afternoon. Brian Prestes on
18 behalf of Microsoft.

19 MS. EAKES: I think that's all from Microsoft.

20 MR. WEAVER: This is James Weaver for the United
21 States.

22 MS. STEHLIK: Noreene Stehlik for the United States.

23 MR. HENDON: Jeremy Hendon for the United States.

24 MS. MATCHISON: And Amy Matchison for the United
25 States.

1 THE COURT: Counsel, good afternoon. As you just
2 heard from Ms. Cuaresma, we are in chambers, in my conference
3 room, with our court reporter present, and my in-court clerk,
4 Ms. Cuaresma, and my law clerk assigned to this particular
5 case, Mr. Blair.

6 So the court has received the materials that were
7 submitted by both sides. As I understand it, there are
8 probably three different issues that we need to go over. The
9 first one is the request by Microsoft to have the IRS make
10 Commissioner Heather Maloy available either for a deposition
11 or a special session of the evidentiary hearing that is
12 scheduled for the 21st.

13 My understanding, from looking at the material submitted
14 by the parties, is that Ms. Maloy will be leaving the
15 employment with the IRS on the 10th, which, I believe, is
16 this Friday. So let's take up that matter first.

17 And I guess what I need to know from looking at this -- I
18 mean, what I've got, basically, is Microsoft saying we
19 believe she is an essential witness. We've got the IRS
20 saying no, she's not; she basically just handled ministerial
21 duties and signed off on things but has no, really,
22 information that would be valuable, that would be something
23 that Microsoft would want.

24 So I guess the question that I have for Microsoft is, what
25 evidence can you give me now, or what makes you believe that

1 Commissioner Maloy can provide testimony on this particular
2 investigation or the decision to retain a private firm, Quinn
3 Emanuel, or to pass the temporary regulations? What makes
4 you think that Ms. Maloy is the one that's necessary versus
5 the witness that the IRS has proffered, which I believe is
6 Eli Hoory?

7 So let me hear from Microsoft. And as you heard
8 Ms. Cuaresma indicate, because we are recording everything,
9 for the purposes of our court reporter we need you to
10 identify yourself before you speak.

11 MS. EAKES: Your Honor, this is Patty Eakes on behalf
12 of Microsoft. I'll respond to the court's question with
13 respect to Ms. Maloy.

14 We believe Ms. Maloy has information on three different
15 topics: First of all, the temporary regulation that the
16 court has said is at issue; second, the designated summons,
17 she was required to sign off on it; and third, the decision
18 to actually hire Quinn Emanuel.

19 Ms. Maloy is the head of the large business and the
20 international group, the LB&I group, which is the group that
21 is directly overseeing the Microsoft audit.

22 We know, with respect to the temporary regulation,
23 Ms. Maloy is the person who actually signed off on the
24 regulation, the temporary regulation, and that's one of the
25 issues that the court has identified as subject to the

1 factual finding at the evidentiary hearing.

2 With respect to -- we also note from other documents that
3 we recently received last Thursday in response to a FOIA
4 request that the LB&I division, the one that Ms. Maloy is the
5 head of, was also involved in the promulgation of that
6 temporary regulation. So it's not a situation, in which it
7 was suggested by the IRS, that Ms. Maloy was simply covering
8 for somebody for a few days. In fact, that division was
9 involved in, and some might say the driving force behind the
10 temporary regulation.

11 As the court identified in your order, at page 7, one of
12 the issues with respect to the temporary regulation was
13 whether or not it was arbitrary and capricious and whether or
14 not it was enacted without reasonable analysis or
15 explanation.

16 In the role that Ms. Maloy played, she's the person who
17 can speak to the institutional purposes and the motive of the
18 IRS in enacting this very significant temporary regulation,
19 which really changed the way things had been done in the
20 past.

21 So, you know, this is an issue in which really we're
22 examining the highest levels of the IRS in terms of
23 instituting a temporary regulation of this nature, and we
24 have reason to believe Ms. Maloy was involved in it, not only
25 because she sign it, but because of the other documents that

1 suggest that her group was, in fact, involved in pushing
2 forward on the temporary regulation.

3 With respect to the designated summons issue, we know from
4 a declaration that was provided by the IRS from Mr. Hoory --
5 it was not filed with the court, but it was provided to Baker
6 and McKenzie several months ago -- that Ms. Maloy was, in
7 fact, briefed on and approved the issuance of the designated
8 summons. And, again, that's a significant issue in terms of
9 the evidentiary hearing that the court has ordered. So we
10 believe she has personal knowledge, based on what Mr. Hoory
11 has said about his involving her in that process.

12 And the third issue is with respect to the hiring of Quinn
13 Emanuel. And, you know, based on what Microsoft knows, the
14 hiring of Quinn Emanuel in the involvement of Microsoft's
15 audit was an unprecedented event, and we have reason to
16 believe, based on what we know about the inner workings of
17 the IRS, that Ms. Maloy would have been involved in that
18 decision. It was a significant departure from past practice,
19 and certainly it's continued to be a significant issue for
20 the IRS, as evidenced by some of the other things that we
21 filed with the court, and so we believe that she has
22 knowledge with respect to that.

23 But, again, it's not a single topic. It's all three of
24 the issues that we believe she is involved in that the court
25 has identified in the ruling on the evidentiary hearing.

1 THE COURT: Ms. Eakes, before we hear from the other
2 side, let me ask you one other question.

3 All of the arguments that you've made, why would they not
4 apply to Senior Advisor Mr. Hoory?

5 MS. EAKES: Well, I mean, perhaps Mr. Hoory has some
6 information about all of those topics; however, I think, most
7 importantly, in terms of the decision-making on an
8 institutional level with respect to the temporary regulation,
9 we believe that that's something that Ms. Maloy, in her role
10 as a high-ranking executive, as the IRS has acknowledged,
11 would be most appropriate to speak to that issue, kind of
12 from an institutional standpoint.

13 THE COURT: All right. Let me hear from the IRS.
14 Thank you.

15 MR. WEAVER: This is James Weaver for the United
16 States.

17 First, let me just iterate for the court that what we're
18 looking towards here is an evidentiary -- a limited hearing,
19 an evidentiary hearing to see whether broader discovery is
20 necessary.

21 And so what we intend to do is try and find and produce
22 the person with the most knowledge, not everyone involved.
23 And so with respect to Ms. Maloy, let me just start with the
24 promulgation of this reg.

25 Ms. Maloy signed off on the reg just by coincidence. She

1 happened to be standing in her role, as we noted in our
2 response, on the particular day that this reg was issued.

3 Now, it is undoubtedly true that all of the IRS divisions
4 are going to have a chance to have input on a regulation, but
5 Ms. Maloy's job is in no way central to the promulgation of
6 this reg. I'm not saying she doesn't know about it, I'm not
7 saying she didn't have input into it, but we do not believe
8 she would be a material witness on this. She wouldn't have,
9 by any stretch, the most knowledge of the reg.

10 And I want to revisit the reg issue later in terms of who
11 we can produce.

12 The regs are typically prepared by counsel, and Ms. Maloy
13 was a commissioner. And moreover, there are very particular
14 issues that Your Honor has identified in your order, and
15 those particular issues are notice and comment and whether it
16 complied with two subsections of -- what is it? -- Section
17 553. And we can tell you that those two subsections aren't
18 even part of the code that the IRS would rely on for issuance
19 of a reg. She's not going to have any knowledge of that.

20 In terms of arbitrary and capricious, again, these
21 regs are prepared by counsel. That's really a question for
22 review of the IRS administrative record, and that's basically
23 what we're going to have to produce for this hearing with
24 respect to that.

25 And with respect to the timing of a Quinn Emanuel

1 contract --

2 THE COURT: Mr. Weaver, let me interrupt you for just
3 one second. Our connection with you isn't the best. I need
4 you to speak up a little bit. I'm having trouble and I
5 believe our court reporter is having trouble following and
6 tracking your words as well. Maybe you can slow down a
7 little bit and speak a little better into the receiver.

8 MR. WEAVER: Yes, Your Honor. Can you hear me now?

9 THE COURT: Yes, that's a little better.

10 MR. WEAVER: Okay. All right.

11 So in terms of the issuance of a reg, there's just not a
12 lot to be had there. And at this stage, Your Honor should be
13 making some sort of determination about whether there is
14 enough evidence to go forward, not circling around to all
15 possible witnesses here. She's a high-level official. And
16 so that's what I have to say about the reg.

17 Now let's talk about the designated summons. Contrary to
18 what Ms. Eakes said, that is not a matter for the evidentiary
19 hearing. You did not identify that in your order as
20 something to take evidence on.

21 Moreover, as we understand it, she was fully briefed on
22 the issuance of the designated summons, as she would have to
23 be.

24 But that's about it. And as I understand -- now, I just
25 have made an appearance in this case very recently, but I

1 believe the understanding of our trial team, per Mr. Rosen,
2 is that that issue is being taken off the table. Whether
3 that's the other side's understanding or not, I don't know.

4 But, again, we've spoken with Ms. Maloy. And other than
5 just doing what an executive would do, the person who's going
6 to have the most knowledge about the whole summons issuance
7 process is Mr. Hoory, and he will be available for
8 cross-examination at will for Microsoft.

9 Finally, with respect to Quinn Emanuel, again, let's take
10 a look at what Your Honor has identified in your order.

11 What's at issue is Quinn Emanuel's role and whether
12 somehow Quinn Emanuel's role, to date, would create some sort
13 of a different process if Your Honor enforces the summons.

14 Mr. Hoory can testify to each of the issues with respect
15 to Quinn Emanuel's role in this. And, again, surely
16 Ms. Maloy was undoubtedly briefed as an executive. We're not
17 saying she has no knowledge, but it would be secondhand
18 knowledge. And here, at this preliminary stage, it ought to
19 suffice for you to hear from Mr. Hoory.

20 And I would add that the same things on that point, like
21 they have reason to believe that Ms. Maloy would be involved,
22 there's no evidence that she would have material testimony as
23 to any purported bad faith here.

24 So she is going to, as we understand it, no longer be
25 employed by the government after July 10th, and at this point

1 it's our position that Your Honor should hear out what
2 Mr. Hoory has to say on these issues, and there's really no
3 need for Ms. Maloy to be involved at this point.

4 MS. EAKES: May I respond, Your Honor?

5 THE COURT: Yes, in one second, Ms. Eakes. All
6 right, Mr. Weaver. That's your argument as to that issue?

7 MR. WEAVER: Yes, Your Honor. I would just add that
8 the case law pretty much contemplates, I think, for these
9 kinds of hearings, that it's the testimony of the revenue
10 agent that matters. That's the person who can really speak
11 to whether a summons has been issued for the proper person.
12 And so at this stage, before we get to any need for
13 discovery, we believe you ought to evaluate what Mr. Hoory
14 has to say.

15 THE COURT: All right. Thank you.

16 Ms. Eakes, now.

17 MS. EAKES: Thank you, Your Honor. Patty Eakes.

18 I guess the thing I'd say is that the government is
19 acknowledging that Ms. Maloy has knowledge and that she had
20 input into this issue before the court, including the
21 temporary regulation. They say she's just not the most
22 knowledgeable person. However, you know, from Microsoft's
23 position, first of all, she has knowledge. That's what we'd
24 like to find out about. And I don't think that Microsoft
25 should be in a situation of simply having to take the IRS's

1 word for the fact that she's not the person who is most
2 knowledgeable.

3 Also, I'd note that we don't know because they haven't
4 identified who is most knowledgeable about the temporary
5 regulation, and, in fact, the email communications have
6 indicated they may or may not be calling additional
7 witnesses.

8 So Microsoft is in the position of we have the burden of
9 proof in this hearing, and we asked for the hearing, and we
10 want to make sure that we're able to examine the people that
11 we believe need to be examined with respect to these issues
12 in order to meet the burden that the court set out for us.

13 MR. WEAVER: Your Honor, this is James Weaver. May I
14 briefly add a comment or two?

15 THE COURT: Very brief.

16 MR. WEAVER: Well, first, I think what Ms. Eakes is
17 asking for here is discovery. And a summons enforcement
18 proceeding is an unusual proceeding. It's not like a regular
19 court case in that Congress set this up just to ensure that
20 there is some protection against abuse of process.

21 But, here, what we're seeking is information. The idea is
22 to proceed and move along, and then we get to what really is
23 at issue, which is getting information to the IRS so that the
24 IRS can do its job. And at this stage, I think it's more
25 than sufficient to hear from Mr. Hoory on all these topics.

1 But we will address, when we get to some other issues, who we
2 might be able to produce with respect to some of the
3 regulation issues that Your Honor raises in his order.

4 THE COURT: All right, counsel. Thank you.

5 All right. Let me move to the second issue, the
6 disclosure of anticipated witness testimony. I don't know
7 who is going to be addressing this from Microsoft's
8 perspective. Ms. Eakes, is that going to be you?

9 MS. EAKES: It is, Your Honor.

10 THE COURT: All right. Do you have any legal basis
11 for asking for this exchange of -- I'm not sure what you mean
12 by "fairly detailed summaries of testimony."

13 MS. EAKES: Well, I think that the court has, you
14 know, broad discretion in order to kind of order proceedings
15 and discovery in the context of these kind of cases. I mean,
16 really all we're asking for is something that makes the
17 process most efficient in terms of moving forward for
18 purposes of the evidentiary hearing.

19 I mean, as the court knows, we've already submitted
20 extensive declarations that, essentially, are serving as what
21 one might call the direct testimony of the witnesses. And
22 for purposes of the efficiency for the court, we thought the
23 witnesses being produced would, essentially, be subject to
24 cross-examination.

25 So all we want is to have -- is to be prepared so that we

1 can make best use of the court's time, which is why we
2 initially suggested to the IRS that they submit declarations
3 of whoever, if any, additional witnesses they're going to be
4 calling.

5 And, again, we're not asking for discovery. In order to
6 be efficient in cross-examining people, we need to understand
7 what they're going to say, and whether that's by way of
8 declaration or some sort of a summary, we're flexible, and
9 defer to the court on that. We're simply looking for
10 something more than what the IRS has said, which is one or
11 two sentences with respect to these witnesses, who, as of
12 this date, remain unidentified. That puts Microsoft in a
13 very difficult position in order to be prepared and to use
14 the limited time that we have before the court to develop the
15 testimony we think is necessary. So that's all we're asking
16 for.

17 THE COURT: All right. Anything else from the IRS on
18 that?

19 MR. WEAVER: Yes, Your Honor. A couple of things.
20 First, I would just add that it's my understanding from my
21 co-counsel here that we were not aware that the court had
22 decided that declarations would be submitted in lieu of live
23 testimony. As a matter of fact, it is our intention to
24 supplement Mr. Hoory's declaration at the hearing with some
25 additional information that relates to the specific topics

1 Your Honor identified in his order.

2 And I would also note that I believe Microsoft had
3 replied, and raised those issues in the reply, to the 6103
4 issues, confidentiality issues, that Mr. Hoory will have an
5 opportunity to address. It is our intention to have some
6 direct testimony from Mr. Hoory.

7 Now, with respect to other witnesses, maybe I can
8 alleviate some of Microsoft's concerns here, Your Honor.

9 First, you know, a couple of sentences would be stretching
10 it. We're happy to provide a short paragraph. But the short
11 of it is, Mr. Hoory will be the government's witness with
12 respect to all of the issues on page 8, the Quinn Emanuel
13 issues that Your Honor has identified.

14 So now let's turn to the other issues, which, quite
15 frankly, are giving counsel for the government some
16 difficulty in figuring out how we're going to comply with the
17 court's order and with the DOJ procedures, and present and
18 address the topics that Your Honor has raised.

19 So I see three issues for potential testimony here,
20 identified on page 7 of Your Honor's order. The first one
21 has to do with whether or not the temporary regulations
22 satisfied one of the exceptions in the APA for issuance
23 without notice and comment. And that's one issue.

24 The second issue is whether it was issued in an arbitrary
25 and capricious manner without reasonable analysis.

1 So, Your Honor, it turns out, and, you know, we're not the
2 experts in the DOJ to do this, but it turns out that
3 challenges to regulations, which occur frequently, are
4 handled by courts -- typically handled by courts and
5 certainly handled here at DOJ via DOJ policy in a manner
6 whereby judicial review of a regulation is made through
7 submission of the administrative record for that regulation
8 or other administrative decision, not on some sort of a new
9 record created through live testimony during a hearing.

10 And so it is our intention, Your Honor, to submit the
11 administrative record. We've asked the IRS to try to give us
12 that by the end of the week so that opposing counsel would
13 have it. But that will essentially be -- it will be
14 certified, I believe. That will be our testimony, and really
15 the only testimony I think that we're permitted to offer on
16 the first two of the regulatory issues identified in Your
17 Honor's order.

18 The third issue has to do with the timing of the issuance
19 of a regulation in contrast to the date of the contract with
20 Quinn Emanuel and whether that raises an inference of
21 improper motive.

22 And, Your Honor, virtually everyone who is involved in the
23 promulgation of a regulation -- I shouldn't say virtually
24 everyone, but the important players are all attorneys, and so
25 we are really struggling to try and figure out if there is a

1 way where we can tell a very limited story that will
2 demonstrate to the court, we believe, that the regulation was
3 not issued with any sort of improper motive or improper
4 purpose, that it did not go into either a deliberative
5 process or some sort of attorney-client privilege.

6 And so we are still trying to figure out if we can produce
7 someone. It is our intention to try and produce someone.
8 We're going to have that nailed down in a couple of days.
9 But let me assure Your Honor that if we do produce testimony
10 on that third point, it would be very limited. A short
11 paragraph summary of that testimony, we'll be happy to make
12 available to Microsoft, succinctly summarized, but it would
13 not be a very long direct exam at all. And we might need to
14 get some sort of protective order from the court or -- and
15 Microsoft's counsel that somehow having an attorney testify
16 as to the purpose of the regs and whether there's an
17 intersection with the audit of Microsoft, that would somehow
18 waive subject matter privilege over what is being addressed.

19 So it is a thorny issue. If we produce somebody, it will
20 be a very short examination. It will not be, like
21 Mr. Hoory's testimony is expected to be, extensive, and
22 therefore, Your Honor, we don't believe that anything other
23 than a short statement will be required. And we anticipate,
24 if there are any additional witnesses other than Mr. Hoory,
25 it will be one person.

1 THE COURT: All right, Mr. Weaver. Thank you.

2 MS. EAKES: May I respond, Your Honor, briefly?

3 THE COURT: Briefly, Ms. Eakes.

4 MS. EAKES: Thank you.

5 Well, first of all, so the court is aware, this is the
6 first time that Microsoft has heard of this process and the
7 way that Mr. Weaver has laid out what he believes is the
8 proper level of review. It's my understanding that the
9 review is not limited to the administrative record when it
10 involves allegations of bad faith or improper purpose.

11 So I just want to make it clear, we don't agree that that
12 is, in fact, the proper level or proper procedure for
13 reviewing this temporary regulation.

14 MR. ROSEN: Your Honor, this is Mr. Rosen for
15 Microsoft. May I add one additional point?

16 THE COURT: Yes.

17 MR. ROSEN: Thank you, Your Honor.

18 Mr. Weaver said on a couple of occasions that the process
19 of drafting regulations is a process involving lawyers, and
20 IRS examiners, agents, and executives, and I would agree that
21 that is normally the case. But the documents that the
22 government has produced to us under FOIA last week reflect
23 that. In fact, Mr. Hoory and others, who are not attorneys
24 in the IRS chief counsel's office, were directly involved in
25 the process giving rise to these regulations.

1 So I think that's an important fact, and a fact that I
2 wanted to bring to the court's attention, and what we intend
3 to put before Your Honor at the evidentiary hearing.

4 MR. WEAVER: Your Honor, this is James Weaver. If I
5 could just briefly respond to that?

6 THE COURT: You may.

7 MR. WEAVER: If I created any confusion, the process
8 is driven by attorneys. Certainly the stakeholders, who are
9 going to be governed by the regulations, have input, and
10 certainly I wouldn't deny that. That's not out of the
11 ordinary.

12 THE COURT: All right, counsel. Thank you.

13 MR. WEAVER: I'm sorry. They're circulated.

14 THE COURT: Mr. Weaver, say that again.

15 MR. WEAVER: Yeah. The proposed regs are circulated
16 among folks like Mr. Hoory. That's not unusual.

17 THE COURT: Certainly. All right. Thank you.

18 Counsel, we're going to put you on hold for just about
19 three minutes or so, and then we'll come back and I'll give
20 you exactly the court's ruling on these particular issues,
21 and then also the additional guidance that was requested in
22 terms of the material submitted by the government in this
23 particular case. And we can talk a little bit about the
24 procedural aspects of how we will -- that we will follow
25 during the hearing itself. All right? So bear with us for

1 about three minutes, at most.

2 (Brief recess.)

3 THE COURT: All right. Counsel, we're back in
4 session. The court reporter is present.

5 All right. Let me started off by saying that this is an
6 unusual proceeding. The purpose, if you saw the order that
7 the court produced previously, is basically to make a
8 determination as to whether or not Microsoft can make the
9 necessary showing to convince the court that further
10 discovery is warranted here, and it is a very different type
11 of proceeding that we don't normally engage in.

12 So in terms of the first two issues that we discussed,
13 whether or not Ms. Maloy, or Commissioner Maloy, should be
14 made available as a witness, the court is going to decide
15 that, no, she does not have to be a witness, at least at this
16 particular point in time; that Mr. Hoory, being a live
17 witness present, will be sufficient, at least for now.

18 In terms of the second issue regarding sharing of the
19 substance of the potential testimony in advance, the court is
20 going to rule that the IRS' proposal of exchanging witness
21 lists, with a short description, by July 10th, will be
22 sufficient.

23 All right. Let's talk about some of the procedural
24 aspects of this.

25 The IRS or the government actually pointed to several

1 areas in which they were asking for guidance from the court,
2 so let me take those exactly as set out in the government's
3 materials that were submitted.

4 The first one is how the court will treat the declarations
5 and the exhibits already filed. Counsel, the court will look
6 at those exhibits and declarations, and we don't have to have
7 testimony about them, if you don't want to. If there's
8 anything you want to clarify, that's perfectly fine, but
9 we'll accept those and take a look at them for whatever value
10 there may be in the court making this particular decision,
11 and that, obviously, includes the administrative record, the
12 certified copy of the administrative record.

13 And while I'm thinking about that, I will ask the
14 government to make that available to Microsoft as soon as the
15 government comes into possession of it as well.

16 Whether or not the court anticipates the parties giving
17 opening statements and closing summations, yes, I think it
18 would be helpful. I would like to know your thinking before
19 we get going into this hearing, because it is such an unusual
20 proceeding in terms of where you intend to go, and at the end
21 I would love to hear what the parties believe the factual
22 testimony has, in fact, shown in view of the issues that the
23 court is going to have to decide in this particular case.

24 So I propose that they be fairly short. I don't need them
25 to be very long. I would say no longer than 15 minutes. 15

1 minutes for opening and 15 minutes for closing, for a total
2 of 30 minutes for both.

3 The other question is whether or not the court anticipates
4 the need for post-hearing briefing. I don't know at this
5 point in time. I'm not sure. If you're asking me to guess
6 at this point in time, I would probably say I don't believe
7 so, but based on the testimony that may come out, and based
8 on the factual questions that may be addressed, there may be
9 a need for some sort of legal briefing. And if so, the court
10 will then advise the parties by further contact later on.
11 Probably -- well, definitely by email.

12 The next issue or question is whether or not the court
13 would relax the rules of evidence for purposes of this
14 summary proceeding. The response to that is yes, to a
15 limited degree. By that I mean it's still obvious that
16 Microsoft needs to meet the standard set forth in the order
17 granting the hearing to begin with. But, yes, in terms of
18 strict adherence to the rules of evidence, no. So we'll be
19 willing to look at things -- at any other hearing, we'd say,
20 no, you have to have live witnesses on -- for example, on
21 some hearsay issues or anything else like that.

22 And, finally, I think the last area was whether or not the
23 parties should file in the record the witness and exhibit
24 lists by July 10th. Yes, I think that would help me in my
25 preparation. We don't need anything extensive, just,

1 basically, the names and any potential exhibits that you
2 think you may be presenting.

3 All right. Does that answer all of the issues in terms of
4 the procedural issues?

5 MR. WEAVER: Your Honor, James Weaver. One other
6 question.

7 In addition to filing the exhibit list on the 10th, would
8 it be advisable or useful to set a date for exchanging
9 exhibits prior to the hearing, with opposing counsel?

10 THE COURT: What would you propose, Mr. Weaver?

11 MR. WEAVER: The 17th would work for the government,
12 Your Honor.

13 THE COURT: I think Microsoft might want them a
14 little earlier. Ms. Eakes, what is your proposal?

15 MS. EAKES: Yes. I say no later than the 13th.

16 THE COURT: Madame Clerk?

17 THE CLERK: It's the Monday before the hearing. The
18 hearing is on the 21st, so Monday the 13th is what she is
19 proposing, and the hearing is on Tuesday the 21st.

20 MR. WEAVER: Your Honor, James Weaver. Can I make a
21 suggestion?

22 THE COURT: Yes.

23 MR. WEAVER: Would it be possible for -- if we go for
24 an earlier date, at least Tuesday or Wednesday, so that we
25 would have a chance to FedEx the materials after getting them

1 together. We'll put them together on Monday, in terms of
2 copying, all that kind of thing. Unfortunately, the
3 attorneys do a lot of the work here on that. So if
4 possible -- the Tuesday or Wednesday would be preferable, if
5 not the 17th, Your Honor.

6 THE COURT: All right. Let's go with by the end of
7 the day on Tuesday the 14th. All right?

8 MR. WEAVER: Yes, Your Honor.

9 THE COURT: Anything else we can help you with today?

10 MR. WEAVER: James Weaver. No, Your Honor. I think
11 that covers what we had here.

12 THE COURT: All right. And then from Microsoft?

13 MS. EAKES: Patty Eakes. No. Thank you very much,
14 Your Honor.

15 THE COURT: All right. Counsel, just to give you a
16 little bit of information as well.

17 We've already had the press contacting us about this
18 particular case, and if that impacts whether or not you wish
19 to have some sort of agreement amongst yourselves, some
20 stipulation regarding exhibits, materials, whatever you're
21 going to present, just be aware the press is quite aware of
22 this, and they've contacted us to make sure that the hearing
23 is still on. They were concerned about today's contact
24 between the court and the parties. In fact, they asked if
25 they could be a part of it, and the court said no because

1 it's simply a scheduling issue. We'll be discussing things
2 that will impact the hearing on the 21st, but nothing that
3 would be open to the public. But just to let you know, if
4 that raises any issues amongst yourselves, you might want to
5 discuss it prior to our hearing on the 21st.

6 So thank you all very much. We'll be in recess.

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8 (THE PROCEEDINGS CONCLUDED.)
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C E R T I F I C A T E

I, Nancy L. Bauer, CCR, RPR, Court Reporter for the United States District Court in the Western District of Washington at Seattle, do hereby certify that I was present in court during the foregoing matter and reported said proceedings stenographically.

I further certify that thereafter, I have caused said stenographic notes to be transcribed under my direction and that the foregoing pages are a true and accurate transcription to the best of my ability.

Dated this 8th day of July 2015.

/S/ Nancy L. Bauer

Nancy L. Bauer, CCR, RPR
Official Court Reporter